

**TESTIMONY IN SUPPORT OF HB 434
GENERALLY REVISE ELECTRIC RESTRUCTURING LAWS**

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Chairman, Montana PSC
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Mr. Chairman and Members of the Committee,

The Public Service Commission drafted and supports HB 434. This bill is superior from a regulatory perspective to HB 25, the other Chapter 8 reform bill this committee has considered.

Both HB 434 and HB 25 make changes to Title 69, which covers public utilities. HB 434 provides the statutory framework for NorthWestern Energy to move from being regulated as the sole electricity default supplier under Chapter 8, the Electric Utility Industry Restructuring Act (SB 390 (1997)), back to a full-service, integrated utility regulated under the traditional statutory framework that has been codified for decades in Chapter 3, Regulation of Public Utilities. The PSC believes it is time to abandon the deregulation experiment and to return to the regulatory framework that has served Montana well since its enactment in 1913.

In drafting HB 434, the PSC was guided by two overarching principles: (1) clearly establish the legislative policy, i.e., allow for the reintegration of NWE, and (2) invest the PSC with sufficient regulatory flexibility to oversee what will be a dynamic transition to minimize the potential for unintended consequences. The subtle, but important, philosophical difference between the two bills can be summed up this way: HB 25 seeks to enhance regulatory certainty for NorthWestern by mandating specific regulatory methods contained in Chapter 8, while HB 434 seeks to rely as much as possible on authority granted the PSC in Chapter 3, which provides the PSC with flexibility where necessary and enables the PSC to better regulate in the public interest by balancing the interests of ratepayers and NorthWestern. Much of the turmoil associated with the implementation of SB 390 in the years following 1997 was a direct result of statutory provisions that were too prescriptive and which prevented the PSC from appropriately responding to events that were not anticipated when the statutes were enacted. The PSC does not want to see that history repeat itself.

There are four major areas of difference between HB 434 and HB 25 as amended:

1. Resource planning

HB 434 relies on the resource planning statute in Title 69, chapter 3, which pre-dates electric restructuring. HB 25 retains the separate resource planning statute in Title 69, chapter 8 that was enacted for restructured utilities.

Rationale: The resource planning provisions in chapters 3 and 8 are nearly the same. The provisions in chapter 8 were developed with reference to chapter 3 and rules adopted by the PSC pursuant to chapter 3. There is no reason to have two separate planning statutes for regulated utilities. The planning provisions in chapter 3 already apply to MDU, and to NWE with respect to transmission.

2. Cost tracking

HB 434 does not mandate that the PSC establish a mechanism for tracking the recovery of certain electricity supply costs. HB 25 requires the PSC to establish a cost recovery tracking mechanism for costs related to power purchase contracts, and expenses for demand-side management and energy efficiency.

Rationale: The PSC already has sufficient authority to implement cost recovery tracking mechanisms if they are consistent with sound regulation and promote the public interest. In fact the PSC has used cost trackers for natural gas expenses for a long time, and implemented an electricity supply cost tracking mechanism prior to the legislature's enactment of the current statutory provisions. In the transition to a re-integrated utility structure for NWE, the PSC should have flexibility to determine when and how to implement cost tracking mechanisms so as to maintain appropriate incentives for the utility to control its costs.

3. Pre-approval-related time constraints

HB 434 does not limit the PSC to specific time frames for adopting rules and processing a utility's applications for approval of new utility-owned, rate-based resources. HB 25 requires the PSC to adopt rules by December 31, 2007, and to process new resource applications within 270 days, with the possibility of an additional 90 days if extraordinary circumstances exist.

Rationale: From a practical standpoint, the December 31, 2007 rulemaking deadline is not workable. If that date is codified, the PSC will do its best to adopt rules. However, the rules may not be as complete, or as good, as rules that might be adopted in the absence of a deadline.

The re-integration of NWE is a complex issue, with potentially long-term consequences. If the PSC is going to pre-approve utility resource decisions, it should have sufficient flexibility to fully and deliberately consider the matter. Rigid time constraints may produce unintended consequences or a propensity in the PSC not to approve proposed, utility-owned resources.

4. Standard for return of large customers to regulated utility service

HB 434 requires a large customer (5+ MW average demand) to demonstrate net utility system benefits from its return to regulated utility service. HB 25 requires that a large customer's return to regulated utility service not adversely impact the rate of other utility customers.

Rationale: Given the difficulty of accurately predicting long-term costs and benefits of returning large customer loads to regulated utility service, and given that large customers currently in choice received benefits that never materialized for other utility customers, the standard in HB 434 is preferable.

In closing, I want to emphasize that any one of the three Chapter 8 reform bills that are being considered this session (HB 25, HB 434 and SB 195) is preferable in the PSC's view to maintaining the status quo.

The PSC recommends a DO PASS on HB 434.

Thank you for the opportunity to comment.